No. 14584

United States Court of Appeals

for the Ninth Circuit.

LOUIS GOLD, Doing Business as the GOLD DESK AND SAFE COMPANY,

Appellant,

vs.

H. M. GERSON, Trustee in Bankruptcy of the Estate of ROBERT STEINBERG, Doing Business as PACIFIC LITHO-ART COMPANY, AMALGAMATED CREDITORS EXCHANGE and JERRY'S MARKET, Bankrupt,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Southern District of California, Central Division

FILED
FEB 1 5 1955
PAUL P. O'BRIEN,
CLERK

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—1-28-55

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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MARSHALL ABBOTT,
215 South La Cienega Blvd.,
Beverly Hills, Calif.

For Appellee:

CRAIG, WELLER & LAUGHARN,
111 West 7th St., Room 817,
Los Angeles 14, Calif.

In the District Court of the United States, Southern District of California, Central Division

No. 59563-Y

In the Matter of:

ROBERT B. STEINBERG, Doing Business as PACIFIC LITHO-ART COMPANY, AMALGAMATED CREDITOR EXCHANGE and JERRY'S MARKET,

Debtor.

IN PROCEEDINGS FOR AN ARRANGEMENT

To the Honorable Judges of the District Court of the United States, for the Southern District of California, Central Division

The petition of Robert B. Steinberg respectfully represents:

I.

The Debtor has resided in the City of Los Angeles, County of Los Angeles, State of California, within the above judicial district, for a longer portion of the six months immediaely preceding the filing of this petition than in any other judicial district.

II.

The Debtor is one who could become a bankrupt under Section 4 of the Bankruptcy Act, 11 U.S.C.A., Section 22.

III.

The nature of the business conducted by the Debtor is that of a public accountant. [2*]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

IV.

No bankruptcy proceedings initiated by petition by or against your petitioner are now pending.

V.

Your petitioner is unable to pay his debts as they mature and proposes an arrangement for the payment of unsecured creditors under Chapter XI, Section 322 of the Bankruptcy Act, 11 U.S.C.A., Section 722, which is contained in Exhibit "A" annexed hereto and made a part hereof.

VI.

The Debtor will file Schedule "A" within ten days from the date hereof, as per Court order.

VII.

The Debtor will file Schedule "B" within ten days from the date hereof, as per Court order.

VIII.

The Debtor will file his Statement of Executory Contracts within ten days from the date hereof.

Wherefore, your petitioner prays that proceedings may be had upon this petition, in accordance with the provisions of Chapter XI of the Bankruptcy Act.

/s/ ROBERT B. STEINBERG,
Debtor.

QUITTNER AND STUTMAN,

By /s/ F. J. QUITTNER,
Attorneys for Petitioner. [3]

[Title of District Court and Cause.]

PROPOSED ARRANGEMENT

Robert B. Steinberg, the above-named Debtor, proposes the following arrangement with his unsecured creditors:

I.

Provisions Modifying or Altering the Rights of Unsecured Creditors

A. The unsecured debts of the Debtor are divided into the following classes:

1. Expenses of administration incurred herein which may be approved, allowed or ordered paid by the Court.

2. All debts which have priority under Section 64a (2), (4) and (5) of the Bankruptcy Act.

3. All unsecured claims.

B. The unsecured debts of the Debtor are treated as follows:

1. The Debtor proposes to pay the unsecured creditors in the following manner:

a. Administration expenses. [4]

The Debtor will pay the actual costs of administration of the Debtor estate as fixed by the Court, the necessary amounts to be expended for filing and indemnity fees and the respective attorneys for parties entitled to compensation out of this estate, as, if and when the same are allowed by the Court.

b. Labor claims.

All labor claims entitled to priority shall be paid as soon as moneys are available for that purpose, without awaiting formal confirmation of this plan of arrangement.

c. Tax claims.

The Debtor proposes to pay all tax claims in full as prior tax claims, in such manner and at such time as the various taxing agencies shall agree.

II.

Provisions for Modifying or Altering the Rights of Unsecured Creditors

The general unsecured claims of the Debtor shall be of one (1) class.

The Debtor proposes to settle and satisfy these claims by payment of 100% of the respective amounts of the said claims, without interest, as allowed in these proceedings, in the following manner, to wit:

The Receiver or other officer appointed by the Court is to liquidate all assets of the Debtor not exempt under the Bankruptcy Act forthwith, except sufficient accounting equipment which the Debtor requires in his accounting practice, and such other entities as, in the opinion of the creditors herein, can be operated profitably. From the proceeds thereof, the expenses of administration are to be paid and all claims entitled to priority under Section 64a of the Bankruptcy Act, and the [5] balance thereof shall thereafter be distributed to

all allowed general, unsecured claims. Any remaining deficiency is to be paid by the Debtor to all of his creditors at the rate of One Thousand Dollars ($1,000.00) per month, commencing six (6) months after confirmation of this arrangement. Said One Thousand Dollars ($1,000.00) is to be distributed pro rata to all of the said general, unsecured creditors by the Disbursing Agent appointed by this Court, at such times as the Court shall hereinafter direct. That the Debtor requires a period of six (6) months after confirmation to commence these payments in order to re-establish his accounting practice, as the only source of payment of the balance of creditors' claims is his own earnings. If the Debtor develops sufficient earnings, he will make every attempt to increase these payments of One Thousand Dollars ($1,000.00) per month, as hereinabove set forth.

That during the period of extension, the said accounting practice of the Debtor will be operated by him on a businesslike basis and, if the creditors desire to appoint a Creditors' Committee, he will consult with the said Creditors' Committee at all times.

III.

It is contemplated that upon confirmation of this arrangement, the Court will continue to retain jurisdiction for all purposes until the arrangement has been fully carried out, as hereinabove set forth.

IV.

That upon completion of the entire arrangement and the satisfaction of all creditors, these proceedings shall thereupon terminate and the Debtor shall be entitled to manage his affairs. [6]

V.

General Information Regarding
The Debtor's Affairs

The Debtor is by profession a public accountant. His other interests consist generally of the following: He operates a collection agency known as Amalgamated Creditor Exchange at 1242 South La Cienega Avenue, Los Angeles 35, California. He is the sole owner of a printing company known as Pacific Litho-Art Company as 1252 South La Cienega Avenue, Los Angeles, California. He has a partnership real estate interest in the Hotel Paradise in Ontario, California, and a partnership interest in a nine-unit apartment building located at 935 Maple Avenue, Burbank, California. He also has a partnership interest in an accounting firm in El Centro, California, known as Marlowe & Marlowe. He also owns a grocery store known as Jerry's Market, located at 3435 Figueroa Street, Los Angeles, California.

Approximately one week ago, the Debtor executed deeds and chattel mortgages to one Harold B. Kirsch, one of his creditors, which were security transactions to secure the said Harold B. Kirsch.

That the property so conveyed consisted of his home, a deed to the equity in the nine-unit apartment, a chattel mortgage on the accounting and printing equipment and the equipment located in Jerry's Market. That said conveyances are unquestionably preferential and should be set aside through these proceedings and all of the realization therefrom should be shared pro rata by the creditors of your Debtor.

VI.

In order to aid the administration of this estate, the Debtor believes that it will be to the creditors' best interest and the interests of the Debtor that a Receiver be appointed at once to take such steps as may be necessary to preserve [7] the assets of this estate, including prompt restraining orders against Harold B. Kirsch, restraining him from selling or disposing of any of the assets which he has seized possession of or will attempt to seize possession of. In addition thereto, steps will be taken by the Receiver to protect the equity of this estate in the nine-unit apartment hereinabove described, as well as the interest and equity of the Debtor in the Hotel Paradise and other interests.

Dated at Los Angeles, California, this 27th day of January, 1954.

/s/ ROBERT B. STEINBERG.

Duly Verified.

[Endorsed]: Filed January 27, 1954. [8]

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND ORDER OF REFERENCE UNDER SECTION 322, CHAPTER XI, OF THE BANKRUPTCY ACT

At Los Angeles, in said District, on January 27, 1954, before the said Court the petition of Robert B. Steinberg, d/b/a Pacific Litho-Art Company, Amalgamated Creditor Exchange and Jerry's Market, that he desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to David B. Head, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Robert B. Steinberg, d/b/a Pacific Litho-Art Company, Amalgamated Creditor Exchange and Jerry's Market, shall attend before said referee on February 4, 1954, and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Leon R. Yankwich, Judge

of said Court, and the seal thereof, at Los Angeles, in said District, on January 27, 1954.

EDMUND L. SMITH,
Clerk;

By /s/ ARTHUR P. STORES,
Deputy Clerk.

[Endorsed]: Filed January 27, 1954. [10]

[Title of District Court and Cause.]

ORDER OF ADJUDICATION

This matter coming on for hearing before the undersigned Referee on March 29, 1954, at the hour of two o'clock p.m., thereof as the first meeting of creditors in proceedings under Chapter XI of the Bankruptcy Act, as amended, and notice of said first meeting and of the hearing on application to confirm Plan, and objections thereto, if any, having been given, the matter having then been continued to April 19, 1954, at the hour of two o'clock p.m., thereof and at said time the debtor herein having failed to file his application for confirmation within the time fixed by the court, and the Referee being fully advised in the premises,

Now, Therefore,

It Is Ordered that the within debtor be, and the same hereby is adjudged a bankrupt.

It Is Further Ordered that bankruptcy be pro-

ceeded with pursuant to the provisions of the Bankruptcy Act.

Dated: April 21, 1954.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

[Endorsed]: Filed April 22, 1954. [11]

[Title of District Court and Cause.]

PETITION OF RECLAMATION

To the Honorable David B. Head, Referee in Bankruptcy:

The Petition of Louis Gold, respectfully shows and alleges:

1. That your petitioner is now and for a long time last past has been engaged in the business of buying and selling office furniture, fixtures and equipment, under the fictitious firm name and style of Gold Desk & Safe Co., and has heretofore complied with Sections 2466 of the Civil Code of the State of California, with reference to the use of fictitious firm names.

2. That prior to the filing of the petition in Bankruptcy herein, the bankrupt was engaged in the business of rendering Public Accounting Services, with offices located at 1244 South La Cienega, in the city and county of Los Angeles, State of California.

3. That a petition in Bankruptcy was filed by the above-named bankrupt herein on the 27th day of January, 1954, and was duly adjudicated as such,

under the provision of Chapter 11, [12] of the Bankruptcy Act; that thereafter H. M. Gerson was duly appointed Trustee and duly qualified and is still acting as such.

4. That as such trustee, said H. M. Gerson took possession of the property of the estate of the bankrupt, including the property described in Schedule "A" hereto annexed.

5. That heretofore and on the days and dates set forth in the Schedule hereto attached, petitioner herein delivered to the bankrupt, at the special instance and request of said bankrupt, the goods described in said Schedule "A" hereto annexed.

6. That prior to the commencement of delivery of said goods, the petitioner and bankrupt entered into an agreement, that the goods described in Schedule "A" were to remain the absolute property of the petitioner; and that the bankrupt would pay to the petitioner the sum of $100.00 per month as rental for the use of said goods; that your petitioner is entitled to immediate possession of same.

7. Upon information and belief that H. M. Gerson, Trustee, now is in possession of said goods, and although duly demanded, said H. M. Gerson, Trustee, herein, has neglected, failed and refused to return the aforesaid property.

Wherefore, Petitioner prays for an order directing said H. M. Gerson herein to deliver to Petitioner the said goods described in Schedule "A" annexed.

Dated: This 15th day of February, 1954.

/s/ LOUIS GOLD,
Petitioner. [13]

Schedule "A"

Invoice No. 3-7792 Date, 2-13-53.

Merchandise—9 #5260 Softone left pedestal typewriter desks.

Invoice No. 3-7792 Date, 2-13-53.

Merchandise—9 #620 Sturgis green on gray posture chairs.

Invoice No. 3-7837 Date, 2-14-53.

Merchandise—5 #31-L Caddy files, gray, with cover and lock, letter size.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—10 #30 Gregson side chairs, chartreuse and softone.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—6 #31 Gregson arm chairs, chartreuse and softone.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Scerbo overhand B1. walnut desk.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—2 Tiffany green typewriter stands.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Kennar #2600 sofa, brown, #202½.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Kenmar #2601 lounge chair, #202½ brown.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—2 Springfield end tables, softone #422.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Beelner & Thomas Couch, green fabric.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Myrtle #196-DT softone conference table.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Telephone stand, softone.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Western leather judge's chair.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Barcalo chair, brown.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—2 steelage #8A43-L four dr., legal files, gray, with lock.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 steelage #8A41-L four dr., letter file, gray, with lock.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—1 Sturgis posture chair, green versilan, gray 620.

Invoice No. 3-7836 Date, 2-14-53.

Merchandise—2 Softone telephone tables.

Invoice No. 3-7864 Date, 2-14-53.

Merchandise—2 Softone telephone tables.

Invoice No. 3-7913 Date, 2-16-53.
Merchandise—1 60″ Softone table B/U.

Invoice No. 3-7913 Date, 2-16-53.
Merchandise—2 #131-L Hanger files (w/cover legal.

Invoice No. 9-7914 Date, 2-16-53.
Merchandise—1 60″ Myrtle 5261F softone special desk finished interior, heavy top, locking device.

Invoice No. 3-8137 Date, 2-16-53.
Merchandise—1 Tiffany green "S" type stand.

Invoice No. 3-8431 Date, 2-27-53.
Merchandise—1 Sturgis posture chair high stool, green & gray.

Invoice No. A-934 Date, 6-10-53.
Merchandise—1 #4224 Keystone gray storage cabinet.

Invoice No. 9406 Date, 4-14-53.
Merchandise—1 60x34 E. C. Softone table & 1 glass top for desk.

Invoice No. D-156 Date, 4-28-53.
Merchandise—2 Tiffany "S" type stand, gray.

Invoice No. B-6613 Date, 12-14-53.
Merchandise—1 "S" Tiffany type stand, gray.

At the time of each and every delivery, on the days and dates above mentioned, a receipt was signed by the recipient, a copy of which was left with the bankrupt, which among other things contained the following clause:

"The purchaser and/or lessee, agrees that title to [15] merchandise listed herewith, shall remain in Gold Desk & Safe Co., until entire purchase price has been paid and purchaser and/or lessee, agrees to permit removal of same, with or without process of law, if not paid for within time stipulated, and to pay any and all expenses for collection or removal of said merchandise including a reasonable attorney fee. It is further understood that any sums paid on account prior to any repossession of above listed merchandise shall be as and for liquidated damages. At the option of the seller, upon default of any single payment, the said seller may declare the entire balance due, and sue for the purchase price thereof. Time is of the essence of this agreement.

/s/ LOUIS GOLD,
Petitioner.

Duly Verified.

[Endorsed]: Filed February 19, 1954, [16] Referee.

[Title of District Court and Cause.]

MEMORANDUM BY REFEREE
(Petition in Reclamation by Gold)

The petitioner, Louis Gold, who does business under the name of Gold Desk and Safe Co., petitioned for the reclamation of certain office furniture then held by the receiver herein, and now held by him as trustee of the above-named estate.

Petitioner contends in his pleading that the furniture in question was delivered to the bankrupt pursuant to an agreement by which the petitioner retained title to the furniture and that the petitioner was to be paid the sum of $100.00 a month for rental of said furniture.

The evidence does not present a clear picture. As to whether or not there was a clear understanding between the parties which constituted an agreement between them, has not been shown. The documentary evidence consists in part of several invoices or delivery sheets (petitioner's exhibit 1). Some of these invoices bear the signature of Robert B. Steinberg, the bankrupt. [17] At the bottom of the invoice appears the following printed matter:

"It is agreed that the purchaser shall pay $..... on execution of this agreement and the sum of $..... on each ..... commencing .....

"The purchaser, and/or lessee, agrees that title to merchandise listed herewith, shall remain in Gold Desk & Safe Co., until entire purchase price

has been paid and purchaser and/or lessee, agrees to permit removal of same, with or without process of law, if not paid for within time stipulated, and to pay any and all expenses for collection or removal of said merchandise including a reasonable attorney fee. It is further understood that any sums paid on account prior to any repossession of above listed merchandise including a reasonable attorney fee. It is further understood that any sums paid on account prior to any repossession of above listed merchandise shall be as and for liquidated damages. At the option of the seller, upon default of any single payment, the said seller may declare the entire balance due, and sue for the purchase price thereof. Time is of the essence of this agreement."

None of the blank spaces in the above paragraph were filled in.

The bankrupt made three payments of $100.00 each. These amounts were credited to an open account carried under the name of the bankrupt on petitioner's books (petitioner's exhibit 2).

From a factual standpoint it is impossible to make a finding that any agreement was entered into between petitioner and bankrupt by which title to the furniture was retained by the [18] petitioner. No verbal contract has been proven and the written material on the invoices does not constitute a contract.

There being no contract by which title was retained, the delivery of the property to the bankrupt

passed title to him, and that title now rests in the trustee.

Counsel for trustee may prepare, serve and file proposed findings, conclusions and an appropriate order in conformance with Local Rule 7a.

Dated this 7th day of June, 1954.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

[Endorsed]: Filed June 7, 1954. [19]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER THEREON

This matter coming on for hearing before the undersigned Referee on the 26th day of February, 1954, at the hour of 10:00 o'clock a.m. thereof, upon a petition in reclamation filed in the within proceeding by one Louis Gold, d/b/a under the fictitious firm name and style of "Gold Desk and Safe Co.," wherein said Louis Gold sought to recover certain personal property in the possession of the trustee under and by virtue of an alleged title retaining contract, and notice of said hearing having been given and the said receiver appearing in person and being represented by his attorney, Nat Rosin, and the said petitioner Louis Gold appearing in person and being represented by his attorney, Marshall Abbott, and evidence having been introduced and the Referee having been fully advised

in the premises, does hereby make the following Findings of Fact, Conclusions of Law and Order thereon:

Findings of Fact

The Referee finds the following facts: [20]

I.

That the Receiver, H. M. Gerson, now trustee, has in his possession certain personal property which is the subject matter of the petition in reclamation herein.

II.

That Louis Gold is doing business under the fictitious firm name and style of Gold Desk and Safe Co.

III.

The transaction between the bankrupt and said Louis Gold is evidenced by certain documents, including invoices and delivery sheets.

IV.

Certain of the invoices bear the signature of Robert B. Steinberg.

V.

At the bottom of the said invoices appears the following printed matter:

"It is agreed that the purchaser shall pay $..... on execution of this agreement and the sum of $..... on each ....., commencing .....

"The purchaser, and/or lessee, agrees that title to merchandise listed herewith, shall remain in Gold Desk & Safe Co. until entire purchase price has

been paid and purchaser and/or lessee, agrees to permit removal of same, with or without process of law, if not paid for within time stipulated, and to pay any and all expenses for collection or removal of said merchandise including a reasonable attorney fee. It is further understood that any sums paid on account prior to any repossession of above-listed merchandise shall be as and for liquidated [21] damages. At the option of the seller, upon default of any single payment, the said seller may declare the entire balance due, and sue for the purchase price thereof. Time is of the essence of this agreement."

VI.

That none of the blank spaces in the above-printed matter was filled in.

VII.

That the bankrupt herein made three payments of $100.00 each toward the purchasing of the personal property in question.

VIII.

That the payments made by said bankrupt were credited on the petitioner's books to an open account carried under the name of the bankrupt herein.

IX.

That there was no agreement between the petitioner and the bankrupt by which title to the personal property in question was to be retained by said petitioner.

X.

That no verbal contract to this end was made.

Conclusions of Law

The Referee concludes as a matter of law:

I.

That the written material on the invoices heretofore mentioned does not constitute a contract.

II.

That there is no contract in existence by which title was retained through the personal property in question by the petitioner.

III.

That when the personal property in question was delivered to the bankrupt, title did then pass to the bankrupt and now rests [22] in the trustee herein, H. M. Gerson.

Order

It Is Ordered that the personal property subject to the petition in reclamation now under consideration, filed by said Louis Gold, be, and the same hereby is, declared and decreed to be free and clear assets of the within bankrupt estate and free of any right, title, lien and/or interest therein in favor of Louis Gold, d/b/a Gold Desk and Safe Co., by virtue of any alleged title retaining contract, or otherwise.

Dated: June 24, 1954.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

Received June 17, 1954.

[Endorsed]: Filed June 24, 1954, Referee. [23]

[Title of District Court and Cause.]

PETITION FOR REVIEW FROM ORDER OF REFEREE DENYING PETITION FOR RECLAMATION

Your Petitioner, Louis Gold, respectfully represents to the court that a Petition in Reclamation was filed in the above matter by your Petition, doing business under the fictitious firm name and style of "Gold Desk & Safe Company," wherein your Petitioner sought to recover certain personal property in the possession of the Trustee, under and by virtue of a title retaining agreement; that the matter came up for hearing before the Honorable David B. Head, Referee in Bankruptcy, on the 26th day of February, 1954; that Findings of Fact were presented to the said Referee and on the 24th day of June, 1954, the following order was entered by the said Referee:

Order

It Is Ordered that the personal property subject to the petition in reclamation now under consideration, filed by said Louis Gold, be, and the same hereby is, declared and decreed to be free and clear assets of the within bankrupt estate and free of any right, title, lien and/or interest therein in favor of [24] Louis Gold, d/b/a Gold Desk and Safe Co., by virtue of any alleged title retaining contract, or otherwise.

Dated: June 24, 1954.

DAVID B. HEAD,
Referee in Bankruptcy.

Your Petitioner further represents and respectfully submits that certain errors were committed by the said Referee in respect to the entry of said order and that said errors are as follows:

1. That the Referee erred in not finding that your Petitioner and the bankrupt entered into a verbal agreement wherein title to the personal property sold and delivered to the bankrupt by your Petitioner was retained in the seller.

2. That the Referee erred in not finding that the execution of the numerous invoices introduced in evidence by the bankrupt constituted an agreement wherein title to the personal property sold would remain in the seller.

3. That the Referee erred in finding that there was no contract in existence by which title was retained through the personal property in question by your Petitioner.

4. That the Referee erred in finding that the title to the personal property in question passed to the bankrupt and now rests in the Trustee.

In support of the foregoing errors alleged to have been committed by the Referee, your Petitioner respectfully submits the following contentions:

(a) There is no evidence in the record that there was any intention on the part of the parties that title to the merchandise should pass to the bankrupt.

(b) The invoices did not contain any specific price and it is uncontradicted that the price was

to be ascertained at a later date and that the Bankrupt was to make payments on account [25] at the rate of $100.00 per month, which was to be a rental until such price was ascertained. This, together with the signed invoices, clearly discloses that this was an executory contract with a reservation of title until the formal contract and the ascertainment of price shall have been agreed by the parties.

(c) In a contract to sell specific goods, title does not pass to the buyer until such time as the parties to the contract intend it to be transferred.

(d) A rental or lease agreement with a reservation of title, or any agreement where the title is to remain in the seller until the total purchase price is paid is a conditional sales agreement.

(e) The right of possession or title to property may be reserved by the parties notwithstanding the delivery of the goods to the buyer.

Wherefore, your Petitioner prays that the findings and the order of the Honorable David B. Head may be reviewed and that a judgment be entered in accordance with the prayers of the reclamation petition heretofore filed by your Petitioner.

/s/ LOUIS GOLD,
Petitioner.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 3, 1954, Referee. [26]

[Title of District Court and Cause.]

MINUTES OF THE COURT—SEPT. 13, 1954

Proceedings: For hearing petition for review of Referee's order denying Petition of L. Gold to recover furniture and fixtures.

Attorney Lubin argues to the Court.

Court adopts findings of referee and orders that the Order of the referee is affirmed; Attorney Bartley to prepare formal order.

EDMUND L. SMITH,
Clerk;

By /s/ JOHN A. CHILDRESS,
Deputy Clerk. [45]

In the United States District Court for the Southern District of California, Central Division

In Bankruptcy No. 59,563-Y

In the Matter of:

ROBERT B. STEINBERG,

Bankrupt.

ORDER RE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER THEREON

This matter coming on regularly for hearing before the undersigned Judge of the United States District Court for the Southern District of California, Central Division, on the 13th day of September, 1954, at 10:00 o'clock a.m. thereof upon

the Petition for Review brought by Louis Gold, and the petitioner appearing by and through his counsel, Marshall Abbott and Alfred Lubin, by Alfred Lubin, and the respondent appearing by and through his counsel, Craig, Weller & Laugharn, by William E. Bartley of counsel, and the matter having been argued by respective counsel, and the court being fully advised in the premises;

This court hereby adopts and approves the Findings of Fact, Conclusions of Law and Order of the Honorable David B. Head, Referee in Bankruptcy, and

It Is Hereby Ordered that the order of the Honorable David B. Head, Referee in Bankruptcy, dated June 24, 1954, is hereby affirmed.

Dated: September 15th, 1954.

/s/ LEON R. YANKWICH,
United States District Judge.

[Endorsed]: Filed September 15, 1954. [46]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Please take notice that the petitioner, Louis Gold, doing business as the Gold Desk & Safe Company, appeals to the United States Court of Appeals, Ninth District from the order of Court entered September 15, 1954, approving the findings of fact and conclusions of law of the Honorable David B. Head, Referee in Bankruptcy, and from the judgment confirming the order of the Honorable

David B. Head, Referee in Bankruptcy, dated June 24, 1954.

Dated October 11, 1954.

ALFRED LUBIN &
MARSHALL ABBOTT,
By /s/ ALFRED LUBIN,
Attorneys for Petitioner.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 13, 1954, [47] U.S.D.C.

In the District Court of the United States, Southern District of California, Central Division
In Bankruptcy No. 59,563-Y

Before: Honorable David B. Head,
Referee in Bankruptcy.

In the Matter of:

ROBERT B. STEINBERG,

Bankrupt.

REPORTER'S TRANSCRIPT OF PROCEEDINGS OF HEARING RE PETITION IN RECLAMATION

Appearances:

H. M. GERSON, ESQ.,
Receiver.

NAT ROSIN, ESQ.,
For the Receiver.

MARSHALL ABBOTT, ESQ., by
ALFRED LUBIN, ESQ.,
For Petitioner, Louis Gold.

February 26, 1954

The Referee: In the Robert Steinberg matter we have a hearing re petition in reclamation.

Mr. Rosin: That's right, your Honor.

The Referee: I read it when it was filed.

Mr. Rosin: On behalf of the receiver, we would like to move to dismiss the petition on the ground it sets up a rental basis but exhibits a contract purchase basis, and fails to set up the original price or the balance due and, you might say, disallows any possible equity on behalf of the receiver, besides any other relief, which I was going to ask the Court for this morning.

Mr. Lubin: If the Court please, the whole transaction, as will be brought out by Mr. Gold, is on a rental basis with option to purchase. The office furniture was delivered to the bankrupt on that basis, and I believe that is all we have to do; we have alleged that. We have not alleged any conditional sales transaction. It is purely a rental thing. The clause in each of the invoices, "The purchaser, and/or lessee, agrees that title to merchandise listed herewith, shall remain in Gold Desk & Safe Co. until entire purchase price has been paid," that is and/or; and he agrees to permit to having the whole thing removed. I believe Mr. Gold can tell you what the transaction is. [2*]

The Referee: The transaction is in this contract, isn't it? It has been reduced to writing.

Mr. Lubin: The entire transaction is not in the

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

contract. There is no contract; that is, no contract except verbal, and it was agreed the title should remain in Gold.

The Referee: Well, in the receipts it says:

"The purchaser, and/or lessee, agrees that title to merchandise listed herewith, shall remain in Gold Desk & Safe Co. until entire purchase price has been paid and purchaser and/or lessee, agrees to permit removal of same, with or without process of law, if not paid for within time stipulated, and to pay any and all expenses for collection or removal of said merchandise including a reasonable attorney fee. It is further understood that any sums paid on account prior to any repossession of above-listed merchandise shall be as and for liquidated demages. At the option of the seller, upon default of any single payment, the said seller may declare the entire balance due, and sue for the purchase price thereof. Time is of the essence of this agreement."

Is there something else besides what is there?

Mr. Lubin: Yes, sir. The deal is simply this——

The Referee: Let's take the testimony. [3]

Mr. Lubin: Yes, let's take the testimony of Mr. Gold, and if your Honor feels there is not enough alleged in the petition, we will protect the receiver——

The Referee: Let's take the testimony first.

Mr. Lubin: Mr. Gold, take the stand, please.

LOUIS GOLD

having been first duly sworn, testified on oath as follows:

By Mr. Lubin:

Q. Your name is Louis Gold? A. Yes, sir.

Q. And what is your business, Mr. Gold?

A. Office furniture business; buying and selling and rental of office furniture.

Q. Where is your business?

A. 345 East Third Street, Los Angeles.

Q. And you are the proprietor of the Gold Desk and Safe Company? A. I am.

Q. Do you know Mr. Robert Steinberg, the bankrupt in this case? A. I do.

Q. Did you have any transaction with him in connection with some office furniture?

A. On July 23rd I went to his office——

Q. July or January?

A. January 23, 1953. I went to his office and consummated [4] a deal with him for renting of new furniture for his new place of business.

Q. Just tell us about the deal.

A. He had some old furniture which we took in trade, which, after the rental was consummated, would apply on the payment of the furniture if we made a deal, or completed the deal.

Q. What kind of a deal did you make with him?

A. He agreed to pay $100 a month until the entire purchase price of the furniture was paid, which was to be determined at the time we completed his office.

(Testimony of Louis Gold.)

Q. On January 23rd was there any purchase price set up?

A. There was no definite purchase price set up, just a tentative price; how much this desk would be and so forth.

Q. (By the Referee): What was the approximate amount?

A. We never arrived at an exact amount.

Q. Well, an approximate amount?

A. About $4,000 worth of furniture.

Q. How much has been paid on it?

A. Three monthly payments of $100 a month.

Q. Then you got $300?

A. Yes, sir. They were to be paid monthly and he missed the first month.

Q. Well, you must have arrived at a figure then?

A. Approximately $500. [5]

Q. Well, you must have arrived at a figure then?

A. We didn't arrive at a definite figure because the prices were changed. For instance, he got a fancy executive desk for the new business and we didn't decide that would be the proper desk to stay in that place when we sent it out and as soon as he didn't make his first monthly payment I realized that was probably too much to ever get out of the deal.

Q. (By Mr. Lubin): Mr. Gold, I have here a series of memorandums, consisting of eleven sheets. Were these the memorandums or receipts of the merchandise, evidencing the furniture that was sold to Mr. Steinberg?

A. These are the delivery receipts showing what we delivered to Mr. Steinberg.

Q. Was this the office furniture actually, which is mentioned in those delivery sheets, which was in fact delivered to Mr. Steinberg?

A. They were, and some of them are personally signed by Mr. Steinberg.

Q. And on the date they bear?

A. Yes; the date is right at the top, the date of delivery.

Mr. Lubin: I will offer these receipts in evidence.

The Referee: They will be marked Petitioner's "1." [6]

Q. (By Mr. Lubin): What rental payments have you received?

A. He paid three $100 checks.

Q. And is that the only rental payment you have received on this furniture?

A. That is the only payments we received on the furniture.

Mr. Rosin: Do you have the dates?

Mr. Lubin: Yes. July 5, $100; pardon me, that is 1952. March 30, $100; May 1st, $100; June 17, $100. The other one was on an old account.

Q. Those three, is that correct; those payments?

A. That's correct.

Q. And I believe you said this furniture, at the time of the delivery, was worth about $4,000; is that correct? A. That is correct; $4,000.

Q. Mr. Gold, in the event the trustee or anyone

(Testimony of Louis Gold.)

under Mr. Steinberg wishes to take over this furniture you would still allow them to——

A. I would still allow anyone who wanted to take over the furniture the $300 rental paid and the $500 value of the old furniture, to apply on the purchase of said furniture.

Mr. Lubin: I have nothing further.

The Referee: Well, gentlemen, it is clear that what you have here—you may step down. What is your full name? [7]

The Witness: Louis Gold.

(Witness leaves stand.)

The Referee: What you have here is an executory contract, under Section 70-B of the Bankruptcy Act. The trustee would have a minimum period of sixty days from the date of adjudication—I believe they have changed that now to the date of the first meeting——

Mr. Lubin: When did you have your first meeting?

The Referee: It hasn't been set yet.

Mr. Rosin: No; the schedules were just filed the other day. We have this problem, as your Honor knows, until the schedules are filed we have no way of knowing the situation in a lot of these things.

The Referee: Well, sixty days. But even if the Court shortened the period—I will direct Mr. Gerson to have this furniture appraised and see whether he has any equity. Of course, if he has no equity——

Mr. Rosin: Well, I haven't gone into the legal

phase of this yet. We would not deny the vendor any rights he has as long as we know what our rights are.

The Referee: You are dealing with an executory contract here and you should be able to decide whether you want to take it over or not. If you reject the contract then you will have to give the furniture back.

Mr. Rosin: Your Honor is not making a decision, [8] is he?

The Referee: No. But I am telling you you will have to act in a reasonable time.

Mr. Rosin: In the light of Mr. Gold's testimony this morning, I would suggest that the matter go over a reasonable length of time, to enable us to know what we are going to do; and, second, this is not even a bankruptcy; it is just a debtor proceeding.

Mr. Lubin: May I ask what is being done with this furniture at the present time? Is it being taken care of so it will not be damaged or lost?

The Referee: I think Mr. Gerson has it locked up.

Mr. Gerson: I showed it yesterday to one of the appraisers and some of it was foreign to him. A lot of the items we found there but some of the items were not known to him. That is a matter of running it down.

The Referee: Didn't he have an appraisal there, or something?

Mr. Gerson: That is the curse of the thing. We are now having a problem of accounting.

The Referee: Some of it may be money, this curse stuff.

Mr. Lubin: Did he have a partner? I don't know anything about it.

The Referee: None of us know anything about it. He is in here with six or seven businesses. We have a hotel, a food market, and an accounting business and—what else?

Mr. Gerson: A printing shop. [9]

The Referee: Yes; and a printing shop.

Mr. Rosin: I also think there are some oil interests showing up. I am not telling you that for a fact, but I think so. I think that would be the best way to handle this. Mr. Abbott called me and said he would like to put this on as early as possible and I wanted to accommodate him but I don't like to be forced——

The Referee: Oh, I won't force you to do anything overnight.

Mr. Lubin: If your Honor wants to give Mr. Rosin an opportunity to check into this thing thoroughly I have no objection as long as the equipment is being taken care of. I would like to have the trustee check to find out how much the bankrupt has in his possession at the present time.

The Referee: Maybe you should make some arrangement for Mr. Gold to go out there.

Mr. Lubin: Yes, sir. Would you make any objection to permitting Mr. Gold to contact Mr. Gerson and go there and find what is there; and if Mr. Kirsch has some of it we can proceed against Mr. Kirsch?

Mr. Rosin: I don't think it will be as easy as that.

Mr. Lubin: Mr. Gold says he saw most of the stuff there.

The Referee: I am pretty sure Mr. Gerson hasn't moved anything.

Mr. Rosin: I talked to Mr. Stutman the other day, and frankly there is a question in my mind as to whether title [10] did or did not pass and I want an opportunity to look into that, without prejudice to Mr. Gold's position.

The Referee: Let's put this over to March 11th at 10:00 o'clock.

Mr. Lubin: Your Honor, I am in trial in Long Beach.

The Referee: How long will that take?

Mr. Lubin: Until at least March 15th, or the 14th.

The Referee: How about March 18th?

Mr. Lubin: How about March 17th?

The Referee: All right. Let's make it March 17th, but we may not have to do anything at that time. We may have this all straightened out before then.

Mr. Rosin: At 10:00 o'clock?

The Referee: Yes, 10:00 o'clock. Do you have any need for these invoices in the meantime?

Mr. Lubin: No; I have offered them in the case.

The Referee: All right. They will be received in evidence.

(Court adjourned.) [11]

Wednesday, March 17, 1954—10:00 A.M.

The Referee: Let us take up the Steinberg matter now.

Mr. Rosin: Your Honor will recall that this was a petition for reclamation and it came up previously, at which time Mr. Gold testified. There was no cross-examination, but at that time I made a motion for dismissal of the petition on the ground that their allegations were insufficient. The matter did not set forth the basis of a petition for reclamation. There were no contracts attached and no basis for title retaining. I think your Honor made a statement to the effect that there appeared to be some executory contract possibility here. Then the matter was put over, because the receiver wanted more time to go into this matter.

Now, since that time we have gone into the matter. We have Mr. Steinberg here. It appears that there is a general denial in every respect to the petition for reclamation. There is the statement made which would be supported by testimony that there never was a conditional sales contract nor a leasing arrangement nor any other kind of arrangement other than an outright sale.

This is the position of the receiver. I did not notify Mr. Lubin until this morning; he is entitled to [12] have Mr. Gold here. I have Mr. Steinberg.

Mr. Lubin: As long as Mr. Steinberg is here, let's have his testimony. Perhaps I will rest on his testimony. After all, Mr. Gold has already testified and there has been certain documentary evidence introduced.

Mr. Rosin: I will put on Mr. Gold for cross-examination, but that is something we can do later on.

The Referee: Let's take Mr. Steinberg's testimony.

Mr. Rosin: Will you take the stand, Mr. Steinberg? Does your Honor have the original exhibits?

The Referee: I will get them.

ROBERT B. STEINBERG

having been duly sworn, appearing as a witness on behalf of the receiver, was examined and testified as follows:

Examination

By Mr. Rosin:

Q. Mr. Steinberg, you are the debtor in these proceedings? A. That is right.

Q. Do you know the Gold Desk and Safe Company? A. Yes, I do.

Q. And particularly Mr. Louis Gold?

A. I do.

Q. Have you had business transactions with the gentleman? A. Yes, sir. [13]

Q. Over what period of time was that?

A. From 1949 to through 1953.

Q. Now, do you recall purchasing furniture or entering into a furniture transaction commencing some time in April, 1953—I beg your pardon. Let's set a better time—somewhere in the early part of 1953?

A. That is right. It was in January, 1953.

Mr. Lubin: January; yes.

(Testimony of Robert B. Steinberg.)

Q. (By Mr. Rosin): Prior to that time, had you purchased any furniture from Mr. Gold——

A. I had.

Q. ——or the Gold Desk and Safe Company?

A. I had.

Q. On how many particular occasions had you purchased furniture from the Gold Desk and Safe Company? A. Prior to January?

Q. Yes.

A. I would say it was on three or four occasions.

Q. Going back to 1949? A. That is right.

Q. On each particular occasion, what were the arrangements?

Mr. Lubin: I am going to object on the ground that it is incompetent and immaterial. That has no bearing on this case, what the arrangement was before in 1949.

The Referee: The objection is good. It will [14] be sustained.

Mr. Rosin: May it be reserved until later when it becomes material?

The Referee: Yes; if you can show materiality.

Q. (By Mr. Rosin): In the early part of 1953, you entered into a transaction involving the purchase or obtaining of certain equipment from the Gold Desk and Safe Company?

A. That is right.

Q. Now, tell us the transaction from its inception. Did you meet with Mr. Gold? A. I did.

Q. Where did it take place?

(Testimony of Robert B. Steinberg.)

A. In my office.

Q. Was anybody else present?

A. Well, right in my office. It was in my private office. Actually, my first meeting with Mr. Gold was on his premises.

Q. When was that? Try and fix the date.

A. It was at the outset of 1953, in January. I came down to his place on East Second Street, I believe it was, and his salesman, a Mr. Chasen—I am not quite certain of the name—showed me different furniture, and we had arranged to meet at the office where I was making my arrangements to move over to on La Cienega. I had still been using the premises on Wilshire Boulevard. But he later called me, I believe, just prior to our arranged meeting [15] and told me he had discussed this with Mr. Gold and Mr. Gold himself wanted to meet me and handle the transaction personally, so Mr. Gold then came up to my office on Wilshire Boulevard and we went over the furniture that I had selected while I was down there, and he gave me the prices of the furniture.

Q. Now, stop right there. This took place at your office on Wilshire Boulevard?

A. That is right.

Q. Was there a list of furniture at that time in existence?

A. No. What had happened was when I went down to Gold's originally, I had selected various items of furniture and the salesman had, if I believe correctly, made a list of it.

(Testimony of Robert B. Steinberg.)

Q. That was what Mr. Gold brought out with him, or did you have it already?

A. I don't recall whether Mr. Gold brought it out with him or whether I had it. I know there was a specified list of furniture that had been selected.

Q. What further took place in this conversation?

A. Well, then, he gave me the prices which were other than the prices that had originally been quoted by his salesman. In fact, the prices were less, and he also quoted various trade-in allowances on the furniture that I had in the premises, which were five desks and one table, [16] various chairs, armchair, side chairs and some other auxiliary equipment.

Q. That was equipment which you had in your office at the time? A. That is right.

Q. Then the arrangement was to take this furniture? A. As a trade-in allowance.

Q. Was there any amount stated at that time?

A. Yes.

Q. It was agreeable?

A. Yes. We agreed. I believe the difference that existed was somewhere between $2,200.00 to $2,300.00. It was twenty-two hundred and some odd dollars without the sales tax applied.

Q. Now, what was the gross amount of the new furniture that was being obtained; the price?

A. A little over $3,000.00.

Q. Do you know what amount had been discussed as the trade-in or sales allowance for your furniture?

(Testimony of Robert B. Steinberg.)

A. If I recall, the amount came in the neighborhood of $800.00 or close to $800.00 as an allowance for the furniture.

Q. You knew there was a net of about $2,300.00?

A. That is right. In fact, Mr. Gold told me—he says, "I will send in the furniture," and I asked him for an invoice and he told me, well, he will prepare the invoice [17] later; in the meantime, he is sending it in.

Also, I had selected a couch and a club chair, a particular couch and club chair, and he sent me something else. He told me that this was cheaper because it was made of plastic; it was just as nice and usable and cost me less. I asked him to quote me the price. He said, "I won't bother quoting. When I come in to make out the invoice, I will adjust it. I won't mislead you or take advantage of you."

Q. That was two pieces of furniture?

A. That is right.

Q. What were they originally slated to be; what type?

A. They were supposed to have been a green, light green couch and light green club chair. Instead, he sent in a brown plastic couch and a brown plastic club chair.

Q. Were the first pieces supposed to have different material other than plastic?

A. That is right. It was leather.

Q. Leather, and what you received was plastic?

A. Yes.

(Testimony of Robert B. Steinberg.)

Q. Do you have any idea of the difference in value?

A. No; I have no idea. He told me it would be a lot less.

Q. At this original discussion you just referred to in your office, were there any statements made by Mr. Gold as to whether or not this would be on a leasing arrangement [18] or a conditional sales contract?

A. None whatsoever. The only agreement that he made with me was that he would let me pay it out directly to him at the rate of $100.00 a month; in fact, he told me he is not putting it through any banks or charging me any interest on it, anything like that; that I shouldn't fail to pay him $100.00 a month.

Q. Did you make some payments?

A. I made three payments and at each time I made the payments, I insisted that he send me the invoices and he claimed he was too busy. On one or two occasions he was on his way to New York. His accountant promised me faithfully it would be prepared and in the meantime he told me, "Just send in the $100.00 on account. You know that your $100.00, that the amount is in excess of what you are sending in, so you don't have to be afraid to send in $100.00."

Q. Were these checks marked in any way?

A. I believe they were marked "on account." I can't say for certain.

Q. At the last hearing when you were not pres-

(Testimony of Robert B. Steinberg.)

ent Mr. Gold testified that on March 30, 1953, $100.00 was paid by you; on May 1, 1953, $100.00 was paid by you, and on June 17, 1953, $100.00 was paid by you? A. That is correct.

Q. Is that about the payments, do you [19] think?

A. Yes; that is correct. And I stopped making payments since then, because I insisted——

Mr. Lubin: I object to what his conclusions are.

The Referee: You needn't go any further.

Q. (By Mr. Rosin): Now, Mr. Steinberg, you had some people working for you during the time in 1953? A. Yes.

Q. Who was G. Finkel?

A. That was the girl who worked for me as bookkeeper.

Q. Who was Elias? A. Sara, clerk-typist.

Q. D. E. Lee? A. Landlord.

Q. Of the premises? A. That is right, sir.

Q. Did any one of these parties have any authority from you to enter into any contract arrangement on your behalf? A. No, sir.

Q. There has been introduced—I believe your Honor has the exhibits.

The Referee: I do have.

Mr. Rosin: There has been introduced—I believe it is the petitioner's exhibit—invoices, or I guess they are called shipping statements.

Mr. Lubin: They are agreements. [20]

The Referee: Invoices.

(Testimony of Robert B. Steinberg.)

Mr. Lubin: And invoices. They are invoices and agreements.

The Referee: Look at it.

Mr. Rosin: I am just trying to identify it.

Q. I will now show you Petitioner's Exhibit One, which is a group of invoices here. Do you notice that there are signatures on each one of them, most of which are "Robert Steinberg"?

At any time when you signed any of these documents, was there any discussion by you with Mr. Gold regarding the signature?

Mr. Lubin: I object to that, because it attempts to alter or vary the terms of a written agreement.

The Referee: I will overrule your objection.

Q. (By Mr. Rosin): On what particular occasions do you recall a discussion with Mr. Gold?

A. Well, at one time—this furniture came in at different times. Not all of the furniture was shipped at one time. Upon the first receipt of shipment of the furniture, I asked Mr. Gold how come there was no price entered in it. It was at that time he told me we have to sit down and just go over the exact invoices and so forth, but in the meantime that this was just a receipt of—an acknowledgment of receipt.

Q. Can you fix a date? Look through those invoices [21] and see if you can determine the date. I think each invoice has a date. See if you can determine the date of this conversation which you say took place.

A. I recall moving into the premises on Satur-

(Testimony of Robert B. Steinberg.)

day, and most of the furniture had come in on a Saturday and as close as I can recollect, I believe it was the Monday following that Saturday that I had spoken to Mr. Gold, and at that time this particular conversation was brought up.

Q. This conversation, did it take place between the two of you in the actual presence of each other?

A. No; over the telephone.

Q. Who had made the original call?

A. I believe that I called Mr. Gold. It was in reference to some of the furniture and questioning —oh, yes, I called him because of the couch and chair that was sent in; the couch.

Q. The ones you had were a different material than what you ordered? A. Yes.

Q. Do you know what number you called; what place you called?

A. I called—it was a Michigan number. I don't recall.

Q. Was there any doubt in your mind whom you were talking to? A. Oh, no. [22]

Q. Did he identify himself? A. Yes.

Q. He said the person was Mr. Gold?

A. Oh, yes.

Mr. Rosin: You may cross-examine.

Examination

By Mr. Lubin:

Q. Mr. Steinberg, at the time that you first spoke with Mr. Gold about the purchase of this furniture, you did not have all of the cash to pay

(Testimony of Robert B. Steinberg.)

for it at that time? A. That is right, sir.

Q. You were moving into these premises on Lot 2, 1244 South La Cienega? A. That is right.

Q. You approached Mr. Gold with the idea of getting new furniture in your new premises, having him take your old and give you an allowance?

A. That is right.

Q. At that time you had a discussion that you were going to pay him at the rate of $100.00 a month? A. That is right.

Q. At that time, there were certain furniture which was delivered to you from time to time; is that correct?

A. Well, the bulk of the furniture; all of the furniture that was in discussion at that particular time was shipped in within the week or so of the time I had [23] moved.

Q. Yes. Now, this exhibit, which is Petitioner's Exhibit No. One—for instance, I am referring to the second sheet bearing date of February 14, 1953, there are a number of items—was this signed; does your signature appear on that document?

A. That is right; it does.

Q. Does it appear where it has a line and says "Buyer"? A. That is right.

Q. Does it also appear at another line which says, "Above goods received in good order. Signed Robert Steinberg"? A. That is right.

Q. In other words, your signature appears twice?

A. That is right.

Q. You had examined this before you signed it?

(Testimony of Robert B. Steinberg.)

A. I examined the contents of the number of items shipped in accordance to what was actually stated.

Q. It was shown to you? A. Yes.

Q. You had an opportunity to examine it?

A. Yes.

Q. With respect to the delivery of this merchandise in this exhibit—we are just talking about the line—thereafter did you sign it?

A. Right at the completition of the [24] delivery.

Q. Which was on or about February 14, 1953?

A. That is right.

Q. I am referring to the next sheet, February 14, 1953, which refers to five caddy files. Does your signature appear in both places, both as buyer and as to receipt of the goods? A. That is right.

Q. I see. Was that signed by you at or about the time you received the merchandise?

A. That is right.

Q. Does your signature appear on this document? A. This is not my signature.

Q. That is not your signature? Do you know whose signature it is?

A. I believe that is the party.

Q. G. Finkel?

A. Yes. Gertrude Finkel. She was my bookkeeper. This was dated after the other, February 14th. This was dated February 15th.

Mr. Rosin: 16th, isn't it?

(Testimony of Robert B. Steinberg.)

Mr. Lubin: 16th, yes; and also signed by Miss Finkel. Whose signature appears here?

A. That is mine.

Q. That is your signature. That is dated February 27, 1953. That is a posture chair, high-stooled chair.

Now, you just testified with respect to your [25] conversation with Mr. Gold here. You said you wanted to buy some furniture and you didn't have the entire cash to pay for all of it and he says that, "Well, if you will pay the rest at $100.00 a month, I am not going to put it through financing and you won't be charged any interest. There will be no banks involved." A. That is right.

Q. At the time of the delivery, was there a definite price mentioned for each item?

A. At delivery?

Q. At the delivery. A. No, sir.

Q. The prices were the prices which were mentioned at the time you saw Mr. Gold; of each item?

A. That is right, sir.

Q. At the delivery, you say, there were no prices?

A. No; no prices.

Q. You received no bill for it?

A. I have never received any invoices.

Q. Did Mr. Gold tell you that after you paid up a few hundred dollars, a few payments, you would get together and determine what the price was?

A. No, sir. What Mr. Gold said was he will get together just as soon as he can. He was very busy.

(Testimony of Robert B. Steinberg.)

On one or two occasions, he was rushed. He had to go to New York or someplace in the East, and he couldn't make it. [26] In fact, at one time we were just about ready to make a particular appointment to meet; and, in any event, Mr. Gold always claimed he was too busy to meet with me.

Q. He told you as soon as he got a little time he would get together with you; is that right?

A. That is right.

Q. That was getting together in determining the exact amount of the merchandise——

A. That is right.

Q. ——the amount of your trade-in allowance and preparing the necessary papers; is that correct?

A. That is right. There was some adjustments to be made inasmuch as he did ship in a couch and a club chair that was other than what had been ordered. In the meantime, he said, "Well, send $100.00 in. You owe in excess of that anyway, so let that apply on account."

Q. What items did he take in on trade?

A. Well, I don't know all of them. I know there was a large executive desk, a swivel arm chair with a side chair, matching side chair. There was one, two, three——

Q. Well, let me ask you——

A. There were five other desks and one table.

Q. Did he give you a certain set price that would be allowed for those items? A. Yes.

Q. What was that price? [27]

(Testimony of Robert B. Steinberg.)

A. Well, I don't recall exactly now, but as we went down item for item we went through the office and he checked over each piece of equipment or furniture that was being turned in and he made an allowance on each piece of furniture.

Q. You don't know what that is at the present time?

A. At the present time I wouldn't know. I do recall that the difference between the amount that was quoted by him for his furniture and the net difference after my trade-in allowance was applied was somewhere between $2,200.00 to $2,300.00.

Q. Is that just your independent recollection, or have you refreshed your memory by the examination of any memorandum or document?

A. It is my independent recollection.

Q. What was the price of that large desk; do you know?

A. The one I traded in or he had sent?

Q. One he sent to you.

A. I believe the large desk, he wanted four hundred and some odd dollars for it, $450.00.

Q. When that was delivered, you noted on the invoice there was no price mentioned?

A. Right.

Mr. Lubin: I have no further questions of this witness.

The Referee: You may step down, Mr. Steinberg.

Mr. Rosin: We have additional evidence we wanted to go into. I have some questions to ask Mr.

Gold on [28] cross-examination, and we will make an effort to find these three checks and introduce them, your Honor. This morning was the first time we were told that they had the case on.

Mr. Lubin: I will admit there were certain three checks.

Mr. Rosin: The statement by Mr. Steinberg was that on its face it had the statement "on account," which I think there is some materiality. At least, I would like to verify the statement of Mr. Steinberg.

Mr. Lubin: I am willing to rest on the testimony as it stands right now. I submit, if the Court please, even according to Mr. Steinberg's testimony——

Mr. Rosin: I am not through. Unless the Court directs me otherwise, I want some cross-examination.

The Referee: If you want to cross-examine Mr. Gold, Mr. Gold is on his way here.

Mr. Lubin: He is not on his way here. I can't get him.

The Referee: When can you get him in; do you know?

Mr. Lubin: Any time. Any time that I have an open date. I cannot make it this afternoon. I can make it tomorrow or Friday anytime or next week some time, anything that suits your convenience.

Mr. Rosin: Tomorrow is all right, if your Honor's calendar will take it.

The Referee: We have a full calendar. [29]

Mr. Rosin: The early part of the week. We can

consider it at 3:00 o'clock of some afternoon. It shouldn't take more than half an hour.

The Referee: I put a matter over yesterday for Friday. Let's see what that was.

Do you want it at 11:30 Friday?

Mr. Rosin: It is all right.

Mr. Lubin: 11:30 Friday is all right. It may take 30, 35 or 40 minutes. It can't be over that length of time.

Mr. Rosin: I have only half a dozen questions on cross-examination, maybe a dozen.

The Referee: We will make it for 11:30 Friday.

(Whereupon the hearing was concluded.) [30]

March 19, 1954

The Referee: We have a continued hearing on the petition in reclamation in this Robert Steinberg matter.

Mr. Rosin: Mr. Lubin, I will show you three checks which I believe have been referred to in the testimony of both your client and Mr. Steinberg. These have been taken from the records of Robert Steinberg.

Mr. Lubin: Yes; I think they are the checks. I just want to check the dates. One was June 15th; one was May 1st, and then March 26th. Yes, these are the ones.

Mr. Rosin: We will offer these three checks as one exhibit; as Trustee's Exhibit——

The Referee: I will have to check through and find out what the next exhibit number is.

Mr. Lubin: We had the petitioner's exhibit and

that is the first receiver's exhibit. I think the invoices came in as the petitioner's exhibit.

The Referee: Yes; they have been in the file for some time.

Mr. Rosin: I would like to call Mr. Gold for the purpose of cross-examination.

The Referee: Yes; Mr. Gold, will you come up and be sworn? [31]

(Louis Gold came forward.)

The Referee: Just have a seat up here. You have been previously sworn in this matter.

LOUIS GOLD

having been previously sworn, testified on oath as follows:

By Mr. Rosin:

Q. Mr. Gold, do you have a list of the furniture that was the property of Mr. Steinberg that you took in for the purpose of giving a credit against any transactions you made with him on the new furniture? A. Yes, I have.

Q. Do you have it with you? A. No, sir.

Q. Can you tell us what it is? Can you go down the line from memory and tell us?

A. I cannot testify from memory on furniture.

Q. But you do have such a list?

A. Yes, sir.

Q. Of each and every item that was taken in?

A. We have the pick-up receipts of every item that was picked up.

(Testimony of Louis Gold.)

Q. That which was in his premises in January, 1953, that was taken in by you?

A. That's correct.

Q. I believe you said that the furniture had a value of [32] around $500? A. Yes; $500.

Q. Mr. Steinberg first testified he believed it was valued somewhere around eight or nine hundred dollars—at first he said $1,000 and then he said eight or nine hundred dollars?

A. He was wrong.

Q. Was that a verbal agreement?

A. The transaction was never completed.

By the Referee:

Q. I know; but when you got the furniture, which was quite some time before this bankruptcy, when you picked the furniture up didn't you give him credit on your books?

A. No, because we never decided on the price to charge him for the furniture. It was all on a rental basis up to that time.

Q. (By Mr. Rosin): What was the agreement as to what would be the disposition of the furniture you were taking in?

A. To allow $500 against the furniture he was to rent, until the time he purchased.

Q. In other words, you were giving a $500 credit against the furniture he was to rent until he purchased it? A. Right.

Q. What was to be the deciding factor as to when the rent changed to a purchase? [33]

A. After we had put in all of the furniture and

(Testimony of Louis Gold.)

we would come to an agreement on how much the amount was.

Q. I believe the very last pieces that were delivered was some time in—I see there is one invoice of December 10, 1953, but the bulk of the items were all in the early part of 1953, May up to June or July, 1953; is that right? A. I believe so.

Q. And you received $300 in checks from him, which are now the receiver's exhibits; you testified to that?

A. We applied that $300 to purchases that were made over the 'phone and not consummated by myself, as credit. They were not even entered as rental figures.

Q. (By the Referee): How is this money entered in your books?

The Witness: Do you have that?

Mr. Lubin: I have a copy of it here. I will give it to the Referee.

The Referee: Go ahead with your examination.

Q. (By Mr. Rosin): Now, Mr. Gold, in the invoices that are now in as the petitioner's exhibits I notice among those invoices there are a few that are headed, "Delivery Receipts."

A. Everything is delivery receipts.

Q. I am calling your attention to the petitioner's exhibit. A. Those are only copies. [34]

Mr. Rosin: No; I believe those are originals.

The Witness: Yes.

Mr. Rosin: I will point to certain ones that have the notation, "Delivery Receipt." I am referring to

(Testimony of Louis Gold.)

one that is dated June 10, 1953, and has on the top, in regular print, "Delivery Receipt Number D-1163"——

The Witness: Yes. You will see this was made out by a salesman; it was a telephone order. I was probably out of town or something. It was subsequently sent out and perhaps charged as a charge; I don't know.

Mr. Rosin: Then another item, dated April 28, 1953, and marked, "Delivery Receipt Number D-156," and refers to a salesman by the name of Silbert.

The Witness: Right.

Q. Would you say the explanation of that is the same as the other?

A. I presume so. All of those are followed up by four or five different papers; different forms.

Q. Do you have those papers with you?

A. No.

Mr. Rosin: Then let's just refer to the papers before us.

Q. These two delivery receipts I have shown you, do you have duplications on them?

A. I don't know. I don't have the papers in my pocket.

Q. Well, do you find any duplications in these?

A. I don't see any duplications here. [35]

Mr. Lubin: How many of those do you have that are labelled, "Delivery Receipts"?

Mr. Rosin: Two of them.

Mr. Lubin: What are they?

(Testimony of Louis Gold.)

The Witness: One 42x22 Keystone gray storage cabinet.

Q. (By Mr. Rosin): Now, Mr. Gold, calling your attention to these two particular items marked, "Delivery Receipt," now those are different and separate and apart from the regular invoices?

A. No; they are just the same as these right here.

Q. In other words, Mr. Gold, the writing or printing on the bottom of the document that says, "Delivery Receipt," is the same as that that is in the invoice?

A. Yes, it is, I believe. If you can read it, I will know exactly.

Mr. Rosin: You go ahead and read it; I want you to read it.

The Witness: My glasses are not good enough to read the fine print, but may I explain?

Mr. Rosin: Just answer the question.

Q. Is it the same, or does it appear to be the same?

A. I cannot tell you because I cannot read that fine print.

Mr. Lubin: The document speaks for itself.

The Referee: Well, read it to him if you want to question [36] him.

(Witness reads document.)

A. It is exactly the same.

Q. Now, Mr. Gold, isn't it a fact that you changed the form of your invoice and delivery slips

(Testimony of Louis Gold.)

after the time you made the original transaction with Mr. Steinberg and you are now using a document entitled, "Delivery Receipt"?

A. We have been using the same document and the same form as here for the last fifteen years.

Q. You misunderstood me. Isn't it a fact you are now using that invoice, the form that is the invoice dated June 10, 1953, which has the words, "Delivery Receipt" on it? Isn't that the form you use now rather than the other one that has no heading at the top?

A. No; we use both of them and they are exactly the same.

Q. When you sent the form to the receiver you used the document that had "delivery receipt" on it, didn't you?

A. The records speak for themselves.

Mr. Rosin: Let me show you the copies which we received from your attorney, Marshall Abbott, and your invoices on which one of them has at the top, "Delivery Receipt."

Mr. Lubin: It is very apparent the attorney had the wrong form.

The Referee: Just a moment, please.

Mr. Lubin: I am just making an objection, your Honor. [37]

The Witness: The first thing we do is to write up on one paper—we have four different types of copies—at the discretion of the salesman or the shipping clerk, they write it up on one of these four copies. Maybe the forms have been changed in the interim but on everything that goes out we

(Testimony of Louis Gold.)

have the salesman who comes along and writes up the order, we have that same thing in every one, "Title Retaining Contract," and on every sale that is made the customer is told it is a title retaining contract.

Q. (By Mr. Rosin): Do you have a separate contract for cash sales?

A. Every receipt has this same thing in it. On every sale that is made in the place we tell the customer it is our property until it is paid for. The only time it might not be a contract is when a person issues a purchase order. With the exception of the purchase order, otherwise on every sale we make we tell the person it is a title retaining contract and it is our property until he pays for it.

Q. (By the Referee): If he pays cash for it do you use the same invoice form?

A. I presume every one of our invoices, except the ones that are sent out to corporations, have the title retaining contract on it.

Q. Don't you know?

A. No, I don't, but I presume so. I instruct everyone [38] to have it that way, because that is the way we do our business, on a title-retaining business.

Q. (By Mr. Lubin): Incidentally, Gold Desk & Safe Co. is a fictitious name; you are the sole owner? A. That's right.

Q. And you have owned it for how long?

A. Seventeen years.

(Testimony of Louis Gold.)

Q. In connection with this transaction with Mr. Steinberg there are no other written documents, other than those which are before the Court now; is that correct?

A. I don't know what you call written documents.

Q. Is there anything else you have in your possession or in your records that has not been produced for this Court besides those we have here from Mr. Steinberg? A. I don't believe so.

Q. And you do have a record of the furniture you took in from Mr. Steinberg's office?

A. Yes.

Q. (By Mr. Rosin): You can produce it?

A. Yes; we can produce the delivery tickets on every pick-up that was made.

Mr. Rosin: We would like to have those here for the purpose of introducing them as exhibits.

Mr. Lubin: I will see that you get them. [39]

Q. (By Mr. Rosin): Mr. Gold, at what conversation did you and Mr. Steinberg discuss the payment or possible payment for the furniture he was buying?

A. At the time I went to his office.

Q. The first time? A. That's right.

Q. Was that before he had seen the furniture?

A. I think he was in the store before and looked at some of the furniture. One of the salesmen, I believe, showed him some furniture.

Q. Then you went out there yourself?

A. Yes, sir.

(Testimony of Louis Gold.)

Q. And you made the arrangements insofar as the furniture that he got; you gave the figures on that? A. Yes, sir.

Q. Now, Mr. Steinberg has testified that according to the figures you gave him, the cost there of the furniture he was going to buy was thirty-two or thirty-three hundred dollars, and that there was an allowance on the furniture you were to take of seven or eight hundred dollars, leaving a net amount of twenty-two or twenty-three hundred due, upon which he has paid three hundred?

A. That would be wrong.

Q. In what way?

A. There was no exact figures on the merchandise, except [40] that if he would take so many desks it would be so much per desk; if he took one type it would be so much; when he took the big desk it would be so much; and the same thing as to various items, and what he would take.

Q. Was there any period of time in which he was to make up his mind as to how much furniture he would take or when he would take it? Was there any question about when he was to make up his mind?

A. No; no question about when he was to make up his mind, but the fact was he owed so much on the rental purchase——

Q. (By the Referee): What do you mean by rental purchase?

A. Well, all of the furniture is on a rental basis.

Q. That was verbal? A. Yes, sir.

(Testimony of Louis Gold.)

Q. What was the deal?

A. He was to pay us $100 until he decided, but when he didn't send us the $100, what was the use to write up a contract and stipulate the prices and so forth? It was still my furniture and I presumed there was no sense in making up a purchase contract and so forth.

Q. You told him this furniture was being rented to him at $100 a month? A. Yes, sir.

Q. And later on if he wanted to buy it you would quote [41] him a price; is that right?

A. Yes, sir.

The Referee: I am badly confused.

Q. (By Mr. Rosin): The last payment of $100 was June 17, 1953. I believe Mr. Steinberg filed his Chapter XI proceeding somewhere in January of 1954. Did you make any demand on him after June 17, 1953, for the $100 rental that you speak of? Yes or no?

A. We made demands for money, yes. We made demands for money continuously and at all times.

Q. That is on the furniture he was holding?

A. We made demands for the rental money he was supposed to pay.

Q. Did you send written demands to him?

A. Most of my business was done over the telephone with him.

Q. In other words, it was all oral, the demands?

A. Yes; except when we found he had filed his petition, then we made a demand through my attorney.

(Testimony of Louis Gold.)

Q. When, if ever, did you tell Mr. Steinberg this furniture was on a rental basis to him and you were not going to sell it to him?

A. I didn't tell him I wasn't going to sell it to him at any time, because we were prepared to sell it at any time he agreed. [42]

Q. When did he quit paying you rental?

A. It was in June.

Q. Did he refuse to pay, or did you press him for it?

A. He said he didn't have any money and we felt sorry for him and didn't press him. We have a lot of people that owe us money that we don't press. May I present a further background of the case? Am I allowed to?

The Referee: Yes, if you can help us any. I am badly confused.

The Witness: Mr. Steinberg worked for my accountant, the man who was my accountant and who has my insurance account; then he went to work and went into business for himself. He got some furniture from me and was supposed to pay for it as he was able, and we sent it out on a title-retaining contract and he knew all of the time it was on a title-retaining contract and if he didn't pay for the furniture at any time we had a right to have it back, and it took him a very, very long time to pay for that furniture. In between time he went to one of our competitors, a stationery company, and got some furniture, and then he paid them—I don't know whether he paid them or not, it was

(Testimony of Louis Gold.)

Atlas Stationers—then he came back and got some more furniture from me and every time he got some he paid a little, and then he opened a big, elaborate place and my salesman told me about it and said, "You had better go over or you will [43] lose the deal," and then I think he came in and looked around, and then I went over, and he told me what he wanted; it was my personal desk that he got; then he traded in the furniture for so much and he would pay me $100 a month rental, and when he got all fixed up he would pay me for it. He had a lot of confidence in me, and it was a case of where we had done a lot of business before. So on that basis he paid me $100 a month, and after we decided on the price he would continue to pay $100 a month and we would have a title-retaining contract all of the time, and then after he paid us so much we would charge him interest on the other and he would have it.

Q. (By Mr. Rosin): Charge him interest on what?

A. After we agreed on the purchase price we would charge him so much, six per cent per annum, to carry it.

Q. How would a man, under those figures, know what he owed you?

A. After we delivered all of the furniture then we would sit down and make up a bill and charge him six per cent per annum on the unpaid balances.

(Testimony of Louis Gold.)

Q. How did it happen in this particular case you didn't follow that course?

A. Because the man didn't have any money. We got reports from my accountant, he owed some money, too, and he said, "He doesn't have any money and isn't doing any good," and if [44] I took his furniture away he would be out of business entirely, and I felt sorry for the man.

Q. Isn't it a fact that if you took the furniture away you wouldn't be able to get the six per cent per annum——

A. No. We are not in the loan business. We are in the furniture business.

Q. Do I understand this is also a basis upon which you sell merchandise: If anyone pays you any money, even by way of rental, as you say, if they are unable to pay the balance, anything they have paid in is lost? A. It is a rental; sure.

Q. Is it liquidated damages or rental?

A. It is all on rental. Unless the party makes an agreement to pay so much down and so much a month, then it is a lease contract.

Q. (By the Referee): Were these three checks of $100 each payments on the rental of furniture?

A. The way we put it on our books, I presume it is rentals, but I cannot tell you what my accountant is doing every day. I believe we gave him credit on certain charges that were made at a later date.

Q. Then it was an open account?

A. No; not an open account. It was billed out on a title-retaining contract. These items are all on a title-retaining contract. [45]

(Testimony of Louis Gold.)

Q. Well, according to this, he has paid for all of it but $12.11?

A. The way it is set up on this, that is right.

Mr. Lubin: I understand these items he has delivered are not set up at all on that.

Mr. Rosin: Do you mean the $100 does not even apply against this furniture?

The Witness: No; there was other deals that went out subsequent and it was put to that account.

Q. (By Mr. Rosin): Let me ask you, on the day you walked into his office and asked for his business, did he owe you anything then?

A. I can look at the records and tell you. He owed a $159 balance.

Q. How much?

A. He owed $159 at that time.

Q. On the day you walked in?

A. That's right; on the old account.

Q. So the $300 couldn't have been in payment of that? A. No; because he paid more.

Q. Now, he had been doing business with you for three years prior to that time, had he not?

A. No; I think in 1951.

Q. About two years he had been doing business with you? A. Right.

Q. And he still owed you $159 on this [46] furniture?

A. He paid the $159 at the time he made the new deal.

Q. And then you gave him a $500 credit on the furniture?

(Testimony of Louis Gold.)

The Referee: No; that does not appear.

The Witness: Nothing shows on there about that.

The Referee: But it does show he had a credit balance on three or four different occasions.

Q. (By Mr. Rosin): This statement that is before you, is that from your records or was that made up for the purpose of the Court?

A. No; this was taken right out of our books.

Q. And that is the ledger on Mr. Steinberg?

A. Yes; that is his account, right there.

Q. Do you have copies of the invoices or documents which have been sent Mr. Steinberg over a period of time?

A. We have copies of all of the invoices that were sent to Mr. Steinberg and everybody.

Q. Did you ever send him a statement of what he owed you?

A. At the end of the month we sent him a statement, except on this particular deal. That was just strictly $100 a month until the deal was consummated, and the deal was never consummated because he didn't pay the $100 per month rental.

Mr. Rosin: No further questions.

Q. (By Mr. Lubin): Mr. Gold, when you sell for cash, or if you sell on [47] a purchase order where title is to be transferred to the purchaser, is a debit entry of that merchandise set up on your books?

Mr. Rosin: Object to the question on the ground it is incompetent, irrelevant and immaterial and

(Testimony of Louis Gold.)

not within the issues, and calls for the conclusion of the witness.

The Referee: I will sustain the objection.

Q. Now at the time the discussion was had, the first discussion with Mr. Steinberg, was there anything mentioned about this merchandise being purchased on open account? A. No.

Q. Now the document you have, which has been presented to you here, that represents the original record insofar as Mr. Robert Steinberg is concerned? A. It does.

Q. And that is kept in the ordinary course of business? A. It is.

Q. And it is kept by your bookkeeper?

A. Yes, sir.

Q. Under your supervision? A. Yes.

Mr. Lubin: I will offer this as petitioner's next in order.

The Referee: Petitioner's "2."

Mr. Rosin: We will make an objection; no foundation laid, your Honor. [48]

The Referee: I will overrule the objection.

Mr. Lubin: I have no further questions.

Mr. Rosin: No further questions.

The Referee: You may step down.

(Witness leaves the stand.)

Mr. Lubin: I would like to submit, if the Court please, one proposition in view of the cases that have been decided here in California in connection with matters of this kind. The cases have held that

rental agreements, lease agreements, are all considered as conditional sales agreements. It doesn't make any difference whether you lease it or whether you agree to sell it at a stipulated price with monthly payments and a title-retaining clause, or whether it is just merely a rental proposition. Under the cases, and I think your Honor knows those cases, they are all considered conditional sales agreements. I don't have to tell your Honor that the transfer of title is a matter of intention of the parties.

The Referee: It is getting along here; it is close to noon. I am pretty rusty on the subject of conditional sales contracts and rental lease agreements. If you will give me, say, within the next week, a short memorandum.

Mr. Lubin: I will be glad to do that.

The Referee: The great difficulty that is involved here is this inconsistency in Mr. Gold's own testimony. He says they entered into a rental agreement and then we find [49] he has this open account with Steinberg and some $300 which was paid in on the rental agreement and credited to this open account. Then, furthermore, Mr. Gold has testified that this other stuff, the secondhand stuff that was traded in and that he took back, was to be credited to the rental account, and we find, apparently, there is not a scratch of paper or an entry of any kind in the books that would indicate that has been credited to anything, so it is a very inconsistent story, as far as I am concerned.

Mr. Lubin: We appreciate this is a very unorthodox way of doing business.

The Referee: As I say, this is a rental deal and this old furniture was to be applied to the rentals, and it has not been done.

Mr. Lubin: Of course we submit here that whether it is a rental deal or a conditional sales contract deal, still title has not changed.

The Referee: This either—or matter is not too good either. We have to find out what kind of a deal it was.

Mr. Rosin: Another fact: How can anyone else permit someone to sign a contract that binds him? We have invoices here signed by three other people.

The Referee: I understand, but if that property was delivered with the agreement that title was to remain in Mr. Gold—— [50]

Mr. Lubin: We have three or four of the main memorandums, representing the bulk of this merchandise. Mr. Gold signed twice, the title-retaining contract and the receipts. He admitted he signed on two different occasions.

The Referee: I understand that but this is one of those things. Let me tell you this: Mr. Gold and other people in that business had better take a little heed. This fine type print is not necessarily a contract; it is probably this and/or business. When you get into this and/or, you are on pretty shaky ground.

Mr. Lubin: I appreciate that.

The Referee: I think Mr. Gold had better sit

down and talk to his attorneys so he won't get himself into the position he is here.

Will you give me a memorandum by the end of next week?

Mr. Lubin: I will, your Honor.

Mr. Rosin: Do you want one from me?

The Referee: If you have anything to submit on it.

Mr. Lubin: And after I submit the memorandum, the matter will stand submitted?

The Referee: That's right.

Mr. Lubin: And there will be no further continuance here?

The Referee: That's right.

(Court adjourned.)

[Endorsed]: Filed June 22, 1954, Referee. [51]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 49, inclusive, contain the original Petition Under Chapter XI of the Bankruptcy Act; Approval of Petition and Order of Reference; Order of Adjudication; Petition of Reclamation; Memorandum by Referee; Findings of Fact, Conclusions of law and Order of Referee; Petition for Review; Petitioner's Exhibits 1 and 2 and Respond-

ent's Exhibit A; Certificate on Review; Order re Findings of Fact, Conclusions of Law and Order Thereon; Notice of Appeal and Designation of Record on Appeal for a full, true and correct copy of Minutes of the Court for September 13, 1954, which, together with Reporter's Transcript of Proceedings on February 26, March 17 and March 19, 1954, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to $2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 19th day of November, A.D. 1954.

EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14584. United States Court of Appeals for the Ninth Circuit. Louis Gold, Doing Business as the Gold Desk and Safe Company, Appellant, vs. H. M. Gerson, Trustee in Bankruptcy of the Estate of Robert Steinberg, Doing Business as Pacific Litho-Art Company, Amalgamated Creditors Exchange and Jerry's Market, Bankrupt, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed November 22, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals,
the Ninth Circuit

No. 14584

LOUIS GOLD, Doing Business as GOLD DESK & SAFE COMPANY,

Appellant,

vs.

H. M. GERSON, Trustee in Bankruptcy in the Matter of ROBERT B. STEINBERG, Bankrupt,

Appellee.

STATEMENT OF POINTS UPON WHICH APPELLANT RELIES

Comes now the Appellant in the above-entitled cause and sets forth a statement of the points on which he intends to rely:

1. The execution of the invoices and the printed agreements contained therein by the bankrupt constituted an agreement wherein title to the personal property sold would remain in the seller.

2. Where the prices for the goods sold was not ascertained by the parties at the time the bankrupt signed the title retention agreement on the invoices; this constitutes an executory contract with a reservation of title until the final contract and the ascertainment of price shall have been agreed by the parties.

3. Title to the personal property did not pass to

the bankrupt, and does not now rest in the Trustee in Bankruptcy.

4. The parties did not intend that title to the personal property in question should pass at the time of delivery and at the time the invoices were executed by the bankrupt.

5. Under the facts in this case, and under the evidence, the transaction was a rental or lease agreement with a reservation of title in the seller until the rental payments equal the purchase price of the personal property sold, and that such an agreement is a conditional sales contract.

Dated November 26, 1954.

ALFRED LUBIN &
MARSHALL ABBOTT,

By /s/ ALFRED LUBIN,
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed November 29, 1954, U.S.C.A.